

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEVIN ASHBY,

Plaintiff,

v.

17-CV-1099-LJV-JJM
DECISION & ORDER

JAMES A. MURPHY, III, et al.,

Defendants.

On October 30, 2017, the plaintiff, Kevin Ashby, commenced this action under 42 U.S.C. § 1983. Docket Item 1. On December 4, 2019, this Court consolidated this action with two other actions that Ashby had pending in this Court. Docket Item 6. On March 9, 2020, this Court referred the consolidated action to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 18.

On May 11, 2020, the defendants' counsel notified the Court that defendant Edward J. Silvestrini had died on November 19, 2016. Docket Item 30. On July 10, 2020, Judge McCarthy issued a text order stating that "[p]ursuant to Fed. R. Civ. P. 25(a)(1), a motion for substitution shall be filed by August 10, 2020, failing which [he would] recommend that the action against defendant Silvestrini be dismissed." Docket Item 33. Neither party filed a notice of substitution, and the time to do so passed.

On August 18, 2020, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the action against Silvestrini should be dismissed. Docket Item 37.

The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R and the defendants' submission to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to dismiss the action against defendant Silvestrini.

For the reasons stated above and in the R&R, the action against defendant Silvestrini is DISMISSED, and the Clerk of Court shall remove Silvestrini as a party in this case. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of March 9, 2020, Docket Item 18.

SO ORDERED.

Dated: October 5, 2020
 Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE